



MINUTES

**CITY OF SCOTTSDALE POLICE LOCAL BOARD OF THE
PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM (PSPRS)
REGULAR MEETING
11:00 a.m., Thursday, October 20, 2011
Human Resources Verde Conference Room
7575 E. Main Street
Scottsdale, Arizona 85251**

PRESENT: Jack Cross, Chairman/Mayoral Designee
Jeffrey Burg, Citizen Member
James Butera, Elected Member
Velicia McMillan, Citizen Member/Merit Head (arrived at 11:06 a.m.)
Jeffrey Walther, Elected Member

STAFF: Colleen Barraza
Ken Nemec
Chanda Washington

OTHER: Hannah Auckland, Esq.
Joel Friedman, Esq.
Police Officer James H. Powers
Julianne Powers
Gerard Watson, Channel 15

Call to order

Chairman Cross called the meeting to order at 11:03 a.m.

Roll call

A formal roll call confirmed the members present as stated above.

1. Review and Approval of Meeting Minutes—September 15, 2011.

BOARD MEMBER WALTHER MOVED TO APPROVE THE REGULAR MEETING MINUTES OF THE SEPTEMBER 15, 2011 PSPRS POLICE LOCAL BOARD MEETING AS PRESENTED. BOARD MEMBER BUTERA SECONDED THE

MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER MCMILLAN ARRIVED LATER.

2. Induction of New Scottsdale Police Officers into PSPRS

Mr. Nemec stated that there were no new Scottsdale Police Officers to induct into the Public Safety Personnel Retirement System at this time.

3. Discussion and Vote on the DROP (Deferred Retirement Option Plan) Termination and Normal Retirement Application of Police Sergeant William C. Relyea

Mr. Nemec reported that Police Sergeant William C. Relyea was retiring from the DROP on October 6, 2011 with approximately 25 years of service. He stated that his paperwork was in order and the monthly pension check associated with this application was \$4,102.65.

BOARD MEMBER BUTERA MOVED TO ACCEPT THE DROP TERMINATION REQUEST OF POLICE SERGEANT WILLIAM C. RELYEA AND TO APPROVE HIS NORMAL RETIREMENT APPLICATION, EFFECTIVE OCTOBER 6, 2011 SUBJECT TO FINAL PAYROLL CALCULATIONS AND QUALIFIED DOMESTIC RELATIONS ORDERS. THE MONTHLY PENSION ASSOCIATED WITH THIS APPLICATION IS \$4,102.65 TO BEGIN ON OR ABOUT NOVEMBER 30, 2011. BOARD MEMBER WALTHER SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FIVE (5) TO ZERO (0).

4. Discussion and Vote on the DROP (Deferred Retirement Option Plan) Termination and Normal Retirement Application of Police Sergeant Heidi L. Parrow

Mr. Nemec reported that Police Sergeant Heidi L. Parrow was retiring from the DROP on December 21, 2011 with just under 25 years of service. He stated that her paperwork was in order and the monthly pension check associated with this application was \$3,499.86.

BOARD MEMBER BUTERA MOVED TO ACCEPT THE DROP TERMINATION REQUEST OF POLICE SERGEANT HEIDI L. PARROW AND TO APPROVE HER NORMAL RETIREMENT APPLICATION, EFFECTIVE DECEMBER 21, 2011 SUBJECT TO FINAL PAYROLL CALCULATIONS AND QUALIFIED DOMESTIC RELATIONS ORDERS. THE MONTHLY PENSION ASSOCIATED WITH THIS APPLICATION IS \$3,499.86 TO BEGIN ON OR ABOUT JANUARY 31, 2012. BOARD MEMBER WALTHER SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FIVE (5) TO ZERO (0).

5. Discussion and Vote on the Application for the Death Benefit for Beneficiary Michelle Durffee on behalf of Deceased Member, Police Officer Julee Ann Patterson

Ms. Washington reported that beneficiary Michelle Durffee was entitled to receive a lump sum payout of the retirement benefits of deceased PSPRS member Police Officer Julee Ann Patterson in the amount of \$29,779.12.

Chairman Cross pointed out that the paperwork reflects that Michelle Durffee was Police Officer Patterson's sister and that no one else has stepped forward requesting benefits.

BOARD MEMBER MCMILLAN MOVED TO APPROVE THE APPLICATION FOR THE DEATH BENEFIT FOR BENEFICIARY MICHELLE DURFFEE ON BEHALF OF DECEASED PSPRS MEMBER POLICE OFFICER JULEE ANN PATTERSON. BOARD MEMBER WALTHER SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FIVE (5) TO ZERO (0).

6. Discussion and Vote on the Accidental Disability Retirement Application of Police Officer James H. Powers.

Mr. Nemec recalled that on June 16, 2011 the Board authorized staff to send Police Officer James H. Powers for an independent medical examination which was conducted on July 1, 2011.

He stated that after receiving the IME results, staff agendaized Police Officer Powers' hearing for the August 18, 2011 Board meeting. At that meeting the Board approved the Applicant's request that his hearing be continued until the meeting of October 20, 2011 to allow sufficient time to prepare his case and to ensure that all necessary parties could attend.

Mr. Nemec summarized that at the request of the Board Police Officer Powers and his attorney waived the time limit for making a determination on his application. He recalled that Police Officer Powers had requested that the medical evidence portion of his case be heard in closed session as well as a request that Board Member Walther recuse himself from further discussion and voting on this case.

Chairman Cross invited Police Officer Powers to speak to the Board. Mr. Friedman reported that in lieu of Dr. Burke being available by telephone for questioning during today's meeting, he had supplied to staff a document clarifying the doctor's opinion that the impact of the pepper-ball rounds in 2003 were the causative factor in the development of the Applicant's fibroelastoma, which later caused the strokes.

Chairman Cross inquired whether the questions listed in Dr. Burke's document were the same questions staff had provided to the IME doctor. Mr. Friedman replied that Dr. Burke was responding to issues presented in Dr. Breed's report. Dr. Breed focused more on the stroke being caused by a pre-existing congenital disorder.

Mr. Friedman stated that Dr. Burke assessed that the reason Police Officer Powers had a stroke in 2010 was the combination of the fibroelastoma along with the Factor V Leiden, which predisposed him to a stroke. He noted that the real question was how did the fibroelastoma develop in the position that it appeared?

Ms. Auckland requested that Mr. Watson of Channel 15 leave the room and that the doors be closed, since Police Officer Powers had previously requested that the medical evidence portion of his hearing be heard in closed session.

Mr. Friedman explained that Dr. Breed focused on the pre-existing blood disorder, which was not being disputed by the Applicant. Dr. Breed emphasized that before the stroke occurred an MRI reflected that the fibroelastoma measured seven millimeters and at the time surgery was performed to remove the tumor it measured one millimeter.

Mr. Friedman argued that although the fibroelastoma was only one millimeter at the time of removal surgery, no one knows how big it was prior to the actual stroke. He elaborated Dr. Burke's opinion was that blunt chest trauma even without penetrating wounds was sufficient to initiate the process of a fibroelastoma growth.

Mr. Friedman summarized that the Applicant incurred a non-penetrating blunt chest trauma as demonstrated by the photographs supplied to the Board at the last meeting, noting that each officer develops different responses to the pepper-ball charges hitting them in the chest.

He pointed out that the manufacturer protocols recommend not shooting pepper-ball charges at the chest areas of female officers as well as the neck, throat, and head areas of any person in order to avoid bodily harm.

CLOSED PUBLIC HEARING

7. Motion to Recess into Executive Session for discussion of the Accidental Disability Retirement Application of Police Officer James H. Powers.

Chairman Cross deemed it necessary to recess into executive session to obtain legal counsel on the accidental disability retirement application of Police Officer James H. Powers.

BOARD MEMBER BUTERA MOVED TO RECESS INTO EXECUTIVE SESSION FOR DISCUSSION OF POLICE OFFICER JAMES POWERS' ACCIDENTAL DISABILITY RETIREMENT APPLICATION. BOARD MEMBER WALTHER SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FIVE (5) TO ZERO (0).

RECONVENE PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM MEETING FOLLOWING EXECUTIVE SESSION

6. Discussion and Vote on the Accidental Disability Retirement Application of Police Officer James H. Powers (continued)

Chairman Cross summarized that Dr. Breed's responses to questions 3 and 4 indicates that Police Officer Powers was ineligible for disability retirement benefits and that although the IME report was to be the Board's primary source of information, Dr. Burke's document which was presented by Mr. Friedman at the beginning of today's meeting would be considered during the Board's discussion of this application.

He invited the Board to discuss whether it would like to vote on the IME report received or whether it would like to either ask Dr. Breed to examine Dr. Burke's new document or send the Applicant for a second IME.

Board Member Butera remarked that Dr. Breed already stated that he stands behind his report and Dr. Burke's new document would probably not change his mind on the matter. He opined that based on the current medical documentation there was not another reason to send Police Officer Powers for a second IME.

Board Member McMillan argued that based on the current documentation there was a reason to send the Applicant for a second IME.

Board Member Burg elaborated that the Board has received conflicting medical documentation and it must determine whether a second IME would provide substantially different medical information.

Board Member Butera stated that Factor V Leiden exists in 5% of all Americans. He stated that nowhere in the medical documentation has he read that there was valve damage, even though Dr. Breed's response to question 4 states that "the surgical literature will support valve damage as a result of blunt force trauma."

Board Member McMillan opined that the Board members do not have the backgrounds to make distinctions between the nuances of each physician's opinion. She pointed out that if the training event had not occurred then the Applicant would not have filed an accidental disability retirement application. It has been her experience that doctors do not care about each other's opinions. She invited the Board to show the employee care and compassion by scheduling a second IME.

In response to Board Member Burg's inquiry regarding whether staff would send the second IME physician all documentation including the document received today from Dr. Burke, Ms. Washington confirmed that staff would send the physician the same information that was sent to the first IME physician unless directed otherwise by the Board.

In response to Board Member Butera's inquiry regarding whether Applicant had a physical exam with Dr. Burke, Police Officer Powers stated that he had been seeing Dr. Burke since March of 2010.

Mr. Friedman expressed his concern that the doctors who have indicated that it was just not possible have misunderstood what actually occurred during the training exercise. He recalled hearing of an entire range of consequences from police officers being hit with pepper-balls and not paintballs.

Mr. Friedman pointed out that the IME report refers to the lower end of the range of velocity identified by the manufacturer. He pointed out that the pepper-ball charge can hit anywhere from 250 to 350 or more feet per second. Assuming that the launcher used in April of 2003 was at manufacturer spec and not altered to increase the muzzle velocity, it would have had an impact ratio of 10 to 12 or more pounds per square foot. The Applicant incurred consecutive traumas in the anatomic region where the heart valve sits.

Mr. Friedman explained that Dr. Burke was the one who brought up the potential causal relationship between the pepper-ball incident and the stroke, stating that cardiac events could occur with non-penetrating injuries.

Should a third opinion be solicited, he would suggest that the IME physician be supplied with a description of the range of consequences currently known, as well as any incident reports that the manufacturer has obtained from any field use of the pepper-balls.

Mr. Friedman elaborated that staff could also supply descriptions of the Applicant's injuries, officers who have not demonstrated any bruising, and an officer who experienced broken skin while wearing two t-shirts when hit by the pepper-balls.

He explained that even though no one has suggested that the valve was torn or that its mechanical function was disrupted, valve damage is the growth of an abnormal piece of tissue. Mr. Friedman argued that the second IME physician should be provided all current documentation related to Police Officer Powers' application.

Mr. Powers recalled that when he provided the photos of the injuries to Dr. Burke approximately one year ago without the facts of the incident, he stated that the pepper-balls rounds definitely caused the stroke. In fact, the doctor thought that he was shot while wearing a bulletproof vest.

Chairman Cross said that whenever the Board sends an applicant for a second IME it is usually because the first IME report was not very clear. Although Police Officer Powers' first IME report was very clear, the additional medical information supplied by Dr. Burke creates a conflict.

In response to Board Member Burg's inquiry regarding whether staff could send the additional information to the second IME, Ms. Auckland stated that the Board could direct staff to do that if the information was available.

Chairman Cross opined that Mr. Friedman's request that staff supply the second IME physician with research on other police officers' training experiences when being hit by the pepper-balls was unnecessary. He stated that the document received today from Dr. Burke should be supplied to the second IME physician.

Mr. Friedman explained that the purpose of the suggestion was because Dr. Breed seems to assume that the impact of the pepper-ball round on Police Officer Powers' chest was insignificant. He argued that the main question was whether it was a significant enough impact to initiate the process of developing a fibroelastoma.

Mr. Friedman stated that he has the names of three employees still employed with the Scottsdale Police Department should staff need further information. He commented that the second IME physician must understand that there are a range of visible external consequences before determining whether that was enough.

Chairman Cross suggested that Police Officer Powers bring the photographs with him to the second IME as well as bringing someone with him to help him communicate his experience in comparison to other police officers' experiences.

Board Member Butera stated that he would like to vote on Police Officer Powers' application using the first IME report. He stated that Dr. Breed indicates that the tumor

had an unknown cause and Dr. Burke looked at the photos and stated that the pepper-balls caused the tumor.

Board Member Butera stated that the doctor contradicts himself when he states that the wounds were superficial and certainly not adequate to cause myocardial injury even though myocardial is a contusion to the heart. He pointed out that the doctor also mentioned "penetrating chest wounds" which this was not, and referenced surgical literature which supports valve damage without clarifying the title of the literature.

Board Member Butera made a motion to vote on the accidental disability retirement application of Police Officer Powers based on the current medical documentation. The motion failed for lack of a second.

BOARD MEMBER MCMILLAN MOVED TO SEND POLICE OFFICER JAMES H. POWERS FOR A SECOND INDEPENDENT MEDICAL EXAMINATION. BOARD MEMBER BURG SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF THREE (3) TO ONE (1). BOARD MEMBER BUTERA DISSENTED AND BOARD MEMBER WALTHER RECUSED HIMSELF.

Board Member Burg recommended that the Applicant bring someone with him to articulate his experience to ensure that the second IME physician receives the whole picture.

In response to Ms. Washington's inquiry regarding what documents the Board would like staff to provide the second IME physician, Chairman Cross stated that the same documents supplied to the first IME should be supplied, noting that the Applicant should bring any other documentation that he wants included to the second IME.

Ms. Washington suggested that the Board provide staff with the authority to locate another IME physician should they have difficulty locating someone to conduct the second examination.

The consensus of the Board was to give staff authority to locate a physician outside of the three contracted entities. Ms. Auckland stated that typically the Board already gives staff the authority to locate an appropriate physician.

Chairman Cross explained that the second IME would be arranged as quickly as possible, since the Applicant continues to be in limbo until the Board makes its final decision.

Ms. Washington explained that they would proceed with the medical separation previously discussed with the application, noting that October 31, 2011 would be the Applicant's last day on payroll with the City of Scottsdale

Board Member Burg reminded Police Officer Powers that the Board could not take action using the letter supplied by Dr. Burke, noting that they could only take action using IME reports they have requested.

8. Report to the Board on Recently Completed Transfers to Prior Service Credits.

Ms. Washington stated that there were no recently completed transfers of prior service credits to report to the Board at this time.

9. Board Suggestions for Upcoming Agenda Items

Chairman Cross stated that there were no Board suggestions for future agenda items.

ADJOURNMENT:

With no further business to discuss, being duly moved and seconded, the meeting adjourned at 12:02 p.m.

Respectfully Submitted by:

REVIEWED BY:

Ken Nemec
PSPRS Police Local Board Secretary

Jack Cross
PSPRS Chairman/Mayoral Designee